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| TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following Patents or Trademarks:

| | | |
|---|-----------------------------|---|
| DOCKET NO. | DATE FILED 2/8/2008 | U.S. DISTRICT COURT Northern District of California |
| PLAINTIFF PHOENIX SOLUTIONS, INC., a California corporation E-filing | | DEFENDANT WELLS FARGO & COMPANY, a Delaware corporation CV 08 0863 |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 6633846 | 1/14/2003 | PHOENIX SOLUTIONS, INC. EMC |
| 2 6665640 | 12/16/2003 | PHOENIX SOLUTIONS, INC. |
| 3 7050977 | 5/23/2006 | PHOENIX SOLUTIONS, INC. |
| 4 7277854 | 10/2/2007 | PHOENIX SOLUTIONS, INC. |
| 5 | | |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| DATE INCLUDED | INCLUDED BY | | | |
|-------------------------|---|--|--|--|
| | <input checked="" type="checkbox"/> Amendment | <input checked="" type="checkbox"/> Answer | <input checked="" type="checkbox"/> Cross Bill | <input checked="" type="checkbox"/> Other Pleading |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK | | |
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In the above—entitled case, the following decision has been rendered or judgement issued:

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| DECISION/JUDGEMENT | | |
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| CLERK | (BY) DEPUTY CLERK | DATE |
|-------|-------------------|------|

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

1 29. As a legal consequence of Defendant's infringement, Plaintiff is
2 entitled to compensation for no less than a reasonable royalty, as well as pre-
3 judgment interest and a preliminary and permanent injunction. In the event that the
4 Court does not exercise its equitable discretion to award a permanent injunction,
5 then Plaintiff is entitled to a judgment that includes a sum equal to the total
6 projected value of a compulsory license for the life of the patent at a royalty rate to
7 be determined by a jury, discounted to present value, to compensate Plaintiff for
8 future infringement.

9 30. The infringement of the '846 Patent has been willful in that Defendant
10 is fully aware of Plaintiff's rights, yet has continued to use the infringing IVR
11 system in violation of the patent laws without a good faith basis for believing it
12 does not infringe or the patent is invalid. This intentional refusal to respect
13 Plaintiff's patent rights constitutes willful infringement under 35 U.S.C. §§ 284 and
14 285, thereby entitling Plaintiff to treble damages and attorneys' fees.

15 **V. SECOND COUNT FOR INFRINGEMENT OF**
16 **UNITED STATES PATENT NO. 6,665,640**

17 31. Plaintiff hereby incorporates by reference the allegations contained in
18 paragraphs 1 through 25.

19 32. Plaintiff is the assignee of the U.S. Patent No. 6,665,640 ("the '640
20 Patent"), attached hereto as Exhibit 2, entitled "Interactive Speech Based
21 Learning/Training System Formulating Search Queries Based on Natural Language
22 Parsing of Recognized User Queries". Plaintiff owns and has standing and capacity
23 to sue and recover damages for infringement under the '640 Patent.

24 33. Defendant has violated Plaintiff's patent rights by operating an IVR
25 system covered by at least one claim of the '640 Patent. Wells Fargo's infringing
26 IVR system has not been manufactured or authorized in any manner by the
27 Plaintiff.

1 34. As a legal consequence of Defendant's infringement, Plaintiff is
2 entitled to compensation for no less than a reasonable royalty, as well as pre-
3 judgment interest and a preliminary and permanent injunction. In the event that the
4 Court does not exercise its equitable discretion to award a permanent injunction,
5 then Plaintiff is entitled to a judgment that includes a sum equal to the total
6 projected value of a compulsory license for the life of the patent at a royalty rate to
7 be determined by a jury, discounted to present value, to compensate Plaintiff for
8 future infringement.

9 35. The infringement of the '640 Patent has been willful in that Defendant
10 is fully aware of Plaintiff's rights, yet has continued to use the infringing IVR
11 system in violation of the patent laws without a good faith basis for believing it
12 does not infringe or the patent is invalid. This intentional refusal to respect
13 Plaintiff's patent rights constitutes willful infringement under 35 U.S.C. §§ 284 and
14 285, thereby entitling Plaintiff to treble damages and attorneys' fees.

15 **VI. THIRD COUNT FOR INFRINGEMENT**
16 **OF UNITED STATES PATENT NO. 7,050,977**

17 36. Plaintiff hereby incorporates by reference the allegations contained in
18 paragraphs 1 through 25.

19 37. Plaintiff is the assignee of the U.S. Patent No. 7,050,977 ("the '977
20 Patent"), attached hereto as Exhibit 3, entitled "Speech-Enabled Server for Internet
21 Website and Method". Plaintiff owns and has standing and capacity to sue and
22 recover damages for infringement under the '977 Patent.

23 38. Defendant has violated Plaintiff's patent rights by operating an IVR
24 system covered by at least one claim of the '977 Patent. Wells Fargo's infringing
25 IVR system has not been manufactured or authorized in any manner by the
26 Plaintiff.

1 39. As a legal consequence of Defendant's infringement, Plaintiff is
2 entitled to compensation for no less than a reasonable royalty, as well as pre-
3 judgment interest and a preliminary and permanent injunction. In the event that the
4 Court does not exercise its equitable discretion to award a permanent injunction,
5 then Plaintiff is entitled to a judgment that includes a sum equal to the total
6 projected value of a compulsory license for the life of the patent at a royalty rate to
7 be determined by a jury, discounted to present value, to compensate Plaintiff for
8 future infringement.

9 40. The infringement of the '977 Patent has been willful in that Defendant
10 is fully aware of Plaintiff's rights, yet has continued to use the infringing IVR
11 system in violation of the patent laws without a good faith basis for believing it
12 does not infringe or the patent is invalid. This intentional refusal to respect
13 Plaintiff's patent rights constitutes willful infringement under 35 U.S.C. §§ 284 and
14 285, thereby entitling Plaintiff to treble damages and attorneys' fees.

15 **VII. FOURTH COUNT FOR INFRINGEMENT**
16 **OF UNITED STATES PATENT NO. 7,277,854**

17 41. Plaintiff hereby incorporates by reference the allegations contained in
18 paragraphs 1 through 25.

19 42. Plaintiff is the assignee of the U.S. Patent No. 7,277,854 ("the '854
20 Patent"), attached hereto as Exhibit 4, entitled "Speech Recognition System
21 Interactive Agent". Plaintiff owns and has standing and capacity to sue and recover
22 damages for infringement under the '854 Patent.

23 43. Defendant has violated Plaintiff's patent rights by operating an IVR
24 system covered by at least one claim of the '854 Patent. Wells Fargo's infringing
25 IVR system has not been manufactured or authorized in any manner by the
26 Plaintiff.

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44. As a legal consequence of Defendant's infringement, Plaintiff is entitled to compensation for no less than a reasonable royalty, as well as pre-judgment interest and a preliminary and permanent injunction. In the event that the Court does not exercise its equitable discretion to award a permanent injunction, then Plaintiff is entitled to a judgment that includes a sum equal to the total projected value of a compulsory license for the life of the patent at a royalty rate to be determined by a jury, discounted to present value, to compensate Plaintiff for future infringement.

45. The infringement of the ‘854 Patent has been willful in that Defendant is fully aware of Plaintiff’s rights, yet has continued to use the infringing IVR system in violation of the patent laws without a good faith basis for believing it does not infringe or the patent is invalid. This intentional refusal to respect Plaintiff’s patent rights constitutes willful infringement under 35 U.S.C. §§ 284 and 285, thereby entitling Plaintiff to treble damages and attorneys’ fees.

VIII. DEMAND FOR JURY TRIAL

46. Plaintiff hereby exercises its right to a jury trial under the Seventh Amendment to the United States Constitution, and pursuant to Fed. R. Civ. Proc., Rule 38, demands a jury trial in accordance therewith.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

a. A preliminary injunction, barring Defendant and all of its agents, officers, attorneys, successors, and assigns from manufacturing, importing or using any system (or components thereof) that infringes upon the '846, the '640, the '977 and the '854 Patents;

b. A permanent injunction, barring Defendant and all of its agents, officers, successors and assigns from manufacturing, importing or using any system

1 (or components thereof) that infringes upon the '846, the '640, the '977 and the
2 '854 Patents;

3 c. That Defendant be required to account to Plaintiff for all savings and
4 revenues realized by Defendant and any subsidiary and any partner company of
5 Defendant from the use of IVR systems infringing the '846, the '640, the '977 and
6 the '854 Patents;

7 d. A judgment for compensatory damages, not less than reasonable
8 royalty, suffered as a result of the patent infringement as well as prejudgment
9 interest;

10 e. A judgment including a sum equal to the total projected value of a
11 compulsory license for the life of the patents, discounted to present value, to
12 compensate Plaintiff for future infringement in the event that a permanent
13 injunction is not awarded;

14 f. Treble damages and attorneys' fees pursuant to 35 U.S.C. §§ 284 and
15 285 for willful infringement of the '846, the '640, the '977 and the '854 Patents by
16 Defendant; and,

17 g. Any and all other relief that the Court deems proper.

18
19 Respectfully submitted,

20
21 TROJAN LAW OFFICES
22 by

23
24
25 Dated: February 6, 2008

26 R. Joseph Trojan
27 Attorney for Plaintiff,
28 PHOENIX SOLUTIONS, INC.


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8 Attorneys for Plaintiff,
9 PHOENIX SOLUTIONS, INC.

E-FILED BY RAND W. WIEKING
CLERK OF U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10
11 PHOENIX SOLUTIONS, INC., a
12 California corporation,

13 Plaintiff,

14 v.

15 WELLS FARGO & COMPANY, a
16 Delaware corporation,

17 Defendant.

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CASE NO. CV 08 0863 EMC
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COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
INFRINGEMENT OF U.S. PATENT
NOS. 6,633,846, 6,665,640, 7,050,977
AND 7,277,854 UNDER 35 U.S.C. §
271 AND DEMAND FOR JURY
TRIAL PURSUANT TO FED. R. CIV.
PROC., RULE 38

1 Plaintiff, PHOENIX SOLUTIONS, INC. (hereinafter "Plaintiff" or
2 "Phoenix"), hereby complains against Defendant, WELLS FARGO & COMPANY
3 (hereinafter "Defendant" or "Wells Fargo"), as follows:

4 1. This is a civil action for patent infringement arising under the patent
5 laws of the United States, 35 U.S.C. § 271 *et seq.*

6 **I. THE PARTIES**

7 2. Plaintiff is a corporation organized and existing under the laws of the
8 State of California, with a place of business at 634 Georgia Avenue, Palo Alto,
9 California, 94306.

10 3. Upon information and belief, Defendant is a corporation organized and
11 existing under the laws of the State of Delaware with a place of business at 420
12 Montgomery Street, San Francisco, California, 94163.

13 **II. FACTUAL BACKGROUND**

14 4. Plaintiff is the owner by assignment of U.S. Patent Nos. 6,633,846,
15 6,665,640, 7,050,977, and 7,277,854 (hereinafter "Patents in Suit") directed to
16 "speech recognition software".

17 5. Plaintiff Phoenix developed the next generation of speech recognition
18 systems that give users the ability to have a verbal conversation with a computer
19 about a subject on which the computer has been programmed to process and
20 generate intelligent responses. One of the first applications of this new technology
21 was its use in telephone customer service lines where the customer calls a computer
22 and a "virtual customer service agent" answers the line and interacts with a caller
23 using "natural speech" akin to a live person.

24 6. Phoenix encompasses the life work of a pioneer in the field of
25 computer-based speech recognition, Dr. Ian Bennett. Originally from Jamaica, Dr.
26 Bennett graduated with honors from the University of British Columbia and went
27 on to receive his Master's and Doctorate degrees in electrical engineering from

1 Stanford University. While at Stanford, Dr. Bennett developed the first practical
2 analog processor for speech compression. After graduation he held technical
3 engineering positions with several high technology companies and contributed to
4 device and product development. As a consultant to the Variable Speech Corp. of
5 Tokyo, Japan, he contributed to the development of an analog speech compression
6 VLSI speech processor used for audio compression in consumer speech recorders.
7 In 1994, Dr. Bennett began the development of a natural language query system
8 (NLQS). Subsequently, he founded Phoenix Solutions, where he guided the
9 development of algorithms for statistics- and semantics-based signal processing of
10 speech that allow a computer to take in natural speech questions and return answers
11 that also sound like natural speech. Dr. Bennett developed various applications for
12 his technology, including interactive conversational systems and interactive guides,
13 intelligent tutoring systems and form-filling systems. Dr. Bennett is currently at the
14 National Science Foundation serving as a Program Director within the Directorate
15 of Engineering, Division of Industrial Innovation & Partnerships.

16 7. Defendant Wells Fargo is a financial services company that provides
17 banking, insurance, investment, mortgage loan, and consumer finance services. In
18 connection with its electronic services, Defendant (and/or others on its behalf)
19 established and operates a number of customer support lines, which can be reached
20 for example at (800) 642-4720 and upon information and belief, other toll-free
21 phone numbers. The customer support lines employ a natural language interactive
22 voice response (IVR) system that includes a virtual agent (hereinafter
23 interchangeably referred to as "IVR system").

24 8. The Plaintiff's natural language IVR system is superior to
25 conventional touch-tone systems because the caller can simply talk to the system
26 using natural language. In contrast, touch-tone IVR systems require the caller to
27 select from a series of choices using a more limited telephone keypad. IVR touch

1 tone systems are also less efficient since they require callers to listen to an entire
2 menu of choices and wade through a series of menus before providing a response to
3 the caller. Consumers hang up at a greater rate in frustration when they become
4 lost in the maze of menus.

5 9. The alternative to touch tone menu systems is to employ live
6 operators. When compared to live operators, the Plaintiff's IVR system is much
7 more cost effective. Based upon industry data, it is estimated that Defendant's use
8 of its current IVR system has allowed it to save 93% of the cost it previously
9 incurred in providing its customer support line and Defendant's customer
10 satisfaction has increased by 30%.

11 10. Upon information and belief, Defendant operates its IVR system using
12 a combination of telephony hardware and computer server hardware that is
13 specifically adapted by Defendant (and/or others on its behalf) to respond to spoken
14 questions from callers concerning the Defendant's business. Such hardware uses
15 supporting software that includes speech recognition and natural language engines
16 used to understand the spoken questions from callers.

17 11. Upon information and belief, the speech recognition engine used by
18 Defendant is distributed, so that some of the speech-processing operations for
19 understanding callers are performed on a client computing system (such as
20 telephony platform or other hardware) while other speech processing operations are
21 performed on a separate server computing system. Upon information and belief,
22 Defendant (and/or others on its behalf) configure such computing systems to
23 customize what speech processing operations will take place on such respective
24 hardware systems to maximize certain characteristics of the system, and to regulate
25 how speech data from the callers is transferred between such systems.

26 12. When customers place calls to Defendant's IVR system, they can
27 speak in a conversational style as if they were speaking to a real person.

1 Defendant's interactive virtual agent responds to the caller's questions in real-time
2 by providing answers in natural speech. The virtual agent has been taught natural
3 language dialogues based on information concerning Defendant's products
4 provided by the Defendant and incorporated into the software. In this manner, the
5 virtual agent can understand questions posed by customers concerning Defendant's
6 products, and give relevant answers.

7 13. Defendant's IVR system uses a speech recognition engine to break
8 down the customer's questions into specific words understood by the IVR system.
9 For example, the speech recognition engine could determine that the user has said
10 his or her account number. Defendant controls precisely what specific words its
11 IVR system will understand as part of its vocabulary by configuring (and/or having
12 others configure on its behalf) certain aspects of such client computing system
13 and/or server computing system.

14 14. Defendant's IVR system employs a natural language engine to
15 understand the meaning of the specific words spoken by its customers. The IVR
16 system, by understanding the meaning and context of specific words, may
17 determine that the customer is asking about a service related problem. Defendant
18 controls precisely what interpretation the IVR system should give to various words
19 spoken by its customers by configuring (and/or having others configure on its
20 behalf) certain aspects of the client computing system and/or server computing
21 system.

22 15. Based on determining the most likely meaning of the customer's
23 specific question, the interactive virtual agent responds with a specific answer. The
24 answer may take the form of an audible response from the agent, or it may take the
25 form of the IVR system routing the caller to a live person working within the
26 appropriate department (such as the service department in the example above). In
27 all instances, Defendant alone controls precisely what responses and actions virtual
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1 agent takes, and has configured (and/or has had others configure on its behalf)
2 certain aspects of such client computing system and/or server computing system to
3 provide such desired responses or actions.

4 16. Upon information and belief, Defendant also configured and controlled
5 (and/or has had others configure and/or control on its behalf) other aspects of the
6 virtual agent's overall behavior, including among other things, the gender, apparent
7 age, speech rate, prosody, style and rate of response. These parameters are selected
8 and controlled by Defendant to increase customer satisfaction with the customer
9 support line.

10 17. Upon information and belief, Defendant (and/or others on its behalf)
11 designed, customized and selected the personality exhibited by the virtual agent as
12 well. This electronic persona was specifically selected to be appealing and
13 attractive to Defendant's customers and to maximize utilization of the IVR system
14 by such customers.

15 18. Upon information and belief, the information used by Defendant's
16 IVR system (including e.g., the grammar used, specific questions to which it can
17 respond, the interpretation of questions, and the answers to be given to customers)
18 were derived by Defendant (and/or others on its behalf) from collecting and
19 studying data from thousands of actual calls made to Defendant's customer support
20 line. Based on this, Plaintiff believes that Defendant (and/or others on its behalf)
21 has trained the IVR system with Defendant's call center data that is unique to
22 Defendant's business. As a result, the IVR system is tailored to respond with
23 appropriate answers to questions posed by Defendant's customer base.

24 19. Accordingly, Defendant's IVR system has been customized with
25 customer content data that is not available from a third party. This Defendant-
26 specific content data is critically important to the behavior and operation of
27 Defendant's IVR system, since without it the IVR system would not know what

1 words to recognize from a caller's utterance, how to determine the meaning of such
2 words, and/or what answer to give to the caller as a response.

3 20. Defendant's IVR system, as noted above, is a combination of
4 components, including at least some hardware, software and content which it
5 obtained from third parties (third party components). Nonetheless, and on
6 information and belief, Defendant is responsible for and has caused such third party
7 components to be combined, adapted and configured (including with such
8 Defendant-specific content) in accordance with specific performance, content
9 requirements and scenarios of the Defendant's customer support operations.

10 21. Consequently, and on further information and belief, the current
11 structure and operation of Defendant's IVR system is a result of content
12 contributions, performance specifications and operational specifications provided
13 by Defendant and configuration/modification of third party components made by
14 Defendant (and/or others on its behalf). Such third party components – as currently
15 available from such third parties - by themselves would not be sufficient to
16 implement Defendant's IVR system without Defendant's cooperation, contributions
17 and actions, including Defendant's provision of the Defendant-specific content
18 data.

19 22. On or about June 2, 2006, Plaintiff sent a letter to Defendant, stating
20 that the IVR system is covered by one or more claims of the Patents in Suit. In that
21 letter, Plaintiff included a number of supporting materials to explain its position on
22 the Patents, and further extended an offer to license the Patents in Suit to
23 Defendant. On or about June 27, 2006, Defendant responded, informing Plaintiff
24 that it needed to investigate the matter and requested identification of the patent
25 claims that may be infringed. On or about June 29, 2006, Plaintiff responded to
26 Defendant, stating that Defendant may have overlooked the CD enclosed with the
27 original letter which has extensive representative claim charts pointing out

1 particularly which claims Plaintiff believes are pertinent to Defendant's system and
2 why. Some many months later on October 18, 2007, and having not heard from
3 Defendant, Plaintiff sent another letter to Defendant to again negotiate a license and
4 requested a response by no later than December 14, 2007. Defendant failed to
5 respond in any meaningful way to the licensing offer or the charge of infringement,
6 necessitating the filing of this action.

III. JURISDICTION AND VENUE

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8 23. This Court has original subject matter jurisdiction over Plaintiff's
9 patent infringement claim pursuant to 28 U.S.C. §1338(a).

10 24. This Court has personal jurisdiction over Defendant because
11 Defendant's corporate headquarters are located in San Francisco, CA.

12 25. Venue properly lies in the Northern District of California pursuant to
13 28 U.S.C. §1391 and §1400, because the acts complained of herein have been
14 committed and are being committed in this Judicial District and Defendant is
15 subject to personal jurisdiction within the District.

IV. FIRST COUNT FOR INFRINGEMENT **OF UNITED STATES PATENT NO. 6,633,846**

16 26. Plaintiff hereby incorporates by reference the allegations contained in
17 paragraphs 1 through 25.

18 27. Plaintiff is the assignee of the U.S. Patent No. 6,633,846 ("the '846
19 Patent"), attached hereto as Exhibit 1, entitled "Distributed Real Time Speech
20 Recognition System". Plaintiff owns and has standing and capacity to sue and
21 recover damages for infringement under the '846 Patent.

22 28. Defendant has violated Plaintiff's patent rights by operating an IVR
23 system covered by at least one claim of the '846 Patent. Wells Fargo's infringing
24 IVR system has not been manufactured or authorized in any manner by the
25 Plaintiff.